IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.Rev.Pet.No. 4028 of 2006

(CRA.334/2005 of SESSIONS COURT, THODUPUZHA)

REVN. PETITIONER/APPELLANT/ACCUSED:

P.B.JAYAMOHAN,
TOWN BAKERY, ELAPPARA, ELAPPARA P.O.,
PEERMADE.

BY ADV. SRI.TITUS MANI
ADV. SRI.S.SURAJ (PALATHANATHU)

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:
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1. CHERIAN, S/O.VARGHESE,
KANIYANPARAMBIL, ELAPPARA KARA,
PEERMADE.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI M.P. SREEKRISHNAN
ADV. SRI. PHILIP MATHAI
ADV. SRI.R. MURALEEKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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CRL. R.P. No. 4028 OF 2006

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Dated this the 19th October, 2007

O R D E R

The accused in C.C.No. 750 of 1998 on the file of the court of the Judicial Magistrate of the first class-I, Peermade is the Revision Petitioner. The offence alleged against the petitioner is under section 138 of the Negotiable Instruments Act. The trial court found the petitioner guilty of the offence and he was sentenced. The petitioner filed Crl. Appeal No. 334 of 2005 on the file of the court of the Sessions Judge, Thodupuzha challenging the conviction and sentence. The appellate court confirmed the conviction but modified the sentence.

2. The case of the complainant is that the complainant and the accused were friends. A sum of Rs. 30,000/- was borrowed from the complainant by the accused. The accused issued Ext.P1 cheque dated 20.06.1998 to the complainant in discharge of the liability. On presentation of the cheque on 18.09.1998, it was dis-honoured on the ground of insufficiency of funds. The complainant issued Ext.P2 notice to the accused and it was acknowledged by the accused as evidenced by Ext.P4 acknowledgment card. Ext.P3 is the postal receipt. No reply was sent by the accused in reply to Ext.P2 notice. The complaint was filed within time.

3. Before the trial court, the complainant was examined as P.W.1 and the Manager of the Bank was examined as P.W.2. The complainant stated in evidence that the accused had issued the cheque. Though P.W.1 was cross examined at length, as rightly pointed out by the court below, his evidence is not shaken in cross examination. P.W.2, the Bank Manager proved Ext.P5 cheque return register to show that Ext.P1 cheque was returned on the ground of insufficiency of funds.

4. The case put forward by the accused in cross examination of P.W.2 is that the accused has no account in the State Bank of Travancore, Elappara Branch or in any other bank and that Ext. P1 cheque does not relate to his account. The court below did not accept this contention on various grounds. One of the grounds on which the court below rejected this contention was that against the conviction and sentence, the accused had filed Crl. Appeal before the Addl. Sessions Court, Thodupuzha and that Crl. Appeal was allowed and the case was remanded to the trial court, granting an opportunity to the accused to recall P.W.2 and to adduce evidence. After remand, the accused had filed a memo stating that he do not intend to recall P.W.2 or to adduce any evidence. Another circumstance noticed by the court below is that though it is specifically stated in Ext.P2 notice that Ext.P1 cheque was issued by the accused and that cheque relates to the account maintained by the accused in Elappara branch of the State Bank of Travancore, the accused did not send any reply notice refuting the allegation made against him. Except some vague suggestions, there is

nothing in the cross examination of P.W.1 to indicate that Ext.P1 cheque was not signed and issued by the accused. There is no explanation for the accused in not sending any reply to Ext.P2 notice. The accused has not adduced any evidence. In the answers given in the questioning under section 313 of the Code of Criminal Procedure, the accused has simply denied everything including the notice . When an opportunity was afforded to him to say whatever he wants to say in respect of the case, he did not say that the signature in Ext.P1 cheque does not belong to him. He only stated that Ext.P1 cheque was not issued in respect of any account. In Ext.P1 cheque, account number is not mentioned. The accused is evidently taking advantage of that situation to raise the contention that the cheque was not issued by him. On the basis of the evidence adduced in the case, the courts below were not inclined to accept the contention put forward by the accused. The courts below positively found that Ext.P1 cheque was issued by the accused in respect of the account maintained by him in the State Bank of Travancore, Elappara Branch. All the facts and circumstances of the case and the documentary and oral evidence were taken into account by the courts below to arrive at the conclusion that Ext.P1 cheque was issued by the accused. In the matter of appreciation of evidence, revisional court, exercising jurisdiction under section 397 of the Code of Criminal Procedure, cannot interfere and upset the findings rendered by the courts below, unless there are justifiable reasons for doing so. In the case on hand, there is no circumstance to indicate that the decision taken by the courts

below requires re-consideration or interference.

I am of the view that the courts below were right in holding that Ext.P1 cheque was issued by the accused and that it was dishonoured by the Bank on the ground of insufficiency of funds in the account of the accused . The courts below were also right in holding that the complaint was filed within time and all the mandatory requirements under section 142 of the Negotiable Instruments Act were complied with. No interference is called for. Civil Revision Petition lacks merit and it is accordingly dismissed.

K.T. SANKARAN,
JUDGE.

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